No. 11760

In the United States
CIRCUIT COURT OF APPEALS
for the Ninth Circuit

UNIVERSAL INSURANCE COMPANY, a corporation,

Appellant,

vs.

FRANCES M. STEINBACH, also known as FRANCIS M. STEINBACH, and CAROLYN S. STEINBACH,

Appellees.

APPELLANT'S REPLY BRIEF

Upon Appeal from the District Court of the United States for the District of Oregon.

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NO CONTRADICTORY EVIDENCE

The Appellees in their brief do not challenge the statement made in Appellant's main brief that with respect to the two main issues raised by this appeal there is no contradictory evidence. Appellees except to our arguments and the inferences which we think should be drawn from the evidence but do not point to any disputing evidentiary facts.

DREDGE WISHRAM TRANSFERRABLE ONLY IN WRITING

Appellant, at page 27 of its brief, argues that the Dredge WISHRAM was a vessel and therefore could be transferred only in writing under the Oregon statute or under the Federal statute. Appellees, on page 15 of their brief, argue that the dredge was not a vessel and that title could be transferred by parol. Even if the Ninth Circuit had not held that a dredge is a vessel there is no room for dispute on this point. 1 U.S.C. 3; *Ellis v. U. S.*, 206 U.S. 246, 50 L. Ed. 1047, 27 S.C.R. 600; *Alabama,* (D.C. Ala.) 19 Fed. 544; *Alabama,* (D.C. Ala.), 22 Fed. 449; *Pioneer,* (D.C. N.Y.), 30 Fed. 206; *Fidelity Trust & Vault Co. v. Mobile St. R. Co.,* (C.C. Ala.), 53 Fed. 607; *International,* (D.C. Pa.), 83 Fed. 840; *McRae v. Bowers Dredging Co.,* (C.C. Wash.), 86 Fed. 344; *Bowers Hydraulic Dredging Co. v. Federal Contracting Co.,* (D.C. N.Y.), 148 Fed. 290, aff'd (C.C.A. 2), 153 Fed. 870.

No Oregon case holds that a dredge is not a vessel. Appellees cite *Yarnberg v. Watson,* 13 Ore. 11, but this case holds that it is a question for a jury at what point an incomplete structure on the ways, intended eventually to become a steam schooner, ceases to be an aggregation of parts and becomes a vessel.

It does not lie in the mouths of the appellees to deny that the Wishram was a vessel inasmuch as they purported to insure their supposed interests therein under a marine insurance policy including the American

Hull Pacific Endorsement, wherein the Wishram is referred to over and over again as a "vessel" (R. 62-66). If appellees did not think the Wishram was a vessel why did they pretend to insure it as such?

The dredge WISHRAM was a vessel. Both the Oregon and the Federal statutes of frauds prevents transfers of vessels except by writings. The Oregon statute governs, because the Wishram was not subject to registration, enrollment or license under United States law.

GOVERNMENT ENGINEERS' LETTER SATISFIES OREGON STATUTE

Appellees on page 8 of their brief argue that the letter from the Government Engineers to Captain Corgan (Appellant's Brief 10) does not constitute a written transfer of the dredge within the meaning of the Oregon statute. This statute reads as follows (Appellant's Brief 29):

> "2-907. A sale or transfer of a vessel is not valid unless it be in writing and signed by the party making the transfer."

The Oregon statute does not require any particular formula of words to constitute a transfer. The Government Engineers' letter acknowledges payment for the dredge, describes it sufficiently for identification, and is signed on behalf of the Government.

This letter was delivered to Captain Corgan, who took delivery of the dredge pursuant to the authority

contained in it. There is no possible doubt about the meaning of the letter. It was intended to serve as a document of title to the dredge. Captain Corgan himself referred to the letter in his May 29, 1946 deposition as a bill of sale "in the form of a letter addressed to me," which is exactly what it was (Appendix to this brief).

CAPTAIN CORGAN'S MAY 29, 1946 DEPOSITION

Appellees at page 5 of their brief take exception to our statement that Hugh Corgan did not disclaim interest in the dredge until the trial. Affirmative disclaimer is different from failure to claim at any particular time. Appellees say that Captain Corgan disclaimed interest in the dredge when his testimony was taken May 29, 1946. This is not true. *Captain Corgan then claimed to be an owner of the dredge subject to a loan by or a mortgage to the four members of the two Steinbach families, secured by the policy of insurance in the names of the two Steinbach ladies.*

Captain Corgan's deposition of May 29, 1946 is before this Appellate Court as Pre-trial Exhibit 6, although it has not been printed in the record. Since it has now been brought into the case by Appellees (their brief page 5) we print as an Appendix to this brief the parts of this deposition which bear especially on ownership of the dredge, eliminating repetitious matter.

APPELLEES HAD NO LEGALLY ENFORCIBLE RIGHTS IN THE DREDGE

The Appellees on page 19 of their brief argue that the "defense" of the Statute of Frauds is not available to the Appellant. Appellant does not set up the Oregon Statute requiring writing in order to effect transfer of the dredge as a "defense". The Oregon statute is only one of many reasons why the Appellees did not own the dredge. Beside taking no written transfer of the dredge the Appellees parted with no consideration or value; took no delivery; never had possession or control of the dredge; became neither trustees nor trustors; and acquired no mortgage or lien of any kind. All of these reasons together deny to the Appellees any semblance of title or ownership, or insurable interest of any kind.

Appellees cite *Roberts v. American Alliance Company,* 212 N.C. 1, 192 S.E. 873, 113 A.L.R. 310. Here two brothers purchased farm property and took legal title as tenants in common. They then effected a partition by means of a survey and plat of the property, and each severally took possession of his own part. One of the brothers insured a building on his portion, and the policy was held valid. The partition was complete except for the exchanging of formal deeds and either brother could have gone into equity and secured specific performance.

It is common doctrine that an interest to be insurable must be one which the law will recognize and protect.

In re Reynolds Estate, 94 Vt. 149, 109 Atl. 60. A lessee with an unexecuted option to purchase has no insurable interest. *Finlon v. National Union,* 65 Ore. 493.

A vendee under an oral contract to purchase real estate is not an unconditional owner unless, because of part performance or other facts, he could enforce specific performance and thereby secure title. *Palmetto Fire Insurance Co. v. Fensler,* 143 Va. 844, 129 S.E. 727; *Mott v. Citizens Insurance Co.,* 123 N.Y.S. 400.

A contract by which an owner agrees to sell personal property unaccompanied by a transfer of possession effects no change of interest and a policy insuring the original owner is valid. *Elder v. Insurance Co. of North America,* 206 Ill. App. 172, ... N.E..... ; *German American Insurance Co. v. Shepherd,* 78 Ind. App. 314, 126 N.E. 447.

Appellees' attempt to distinguish some of the Oregon cases cited in Appellant's Brief on the basis of the Standard Fire Policy Law which was in effect when some of these cases were decided. But there is no distinction between the ownership claimed on behalf of appellees by John L. Steinbach and Captain Corgan and the sole and unconditional ownership described in the standard fire policy act.

APPELLEES' INCONSISTENT THEORIES OF OWNERSHIP

As Appellant pointed out in its main brief (7-8), the issue is ownership, but the trial court found only that the Appellees were "proper parties" to insure. Appellees in their answering brief now do not attempt to sustain this finding, but claim that the Appellees were the owners of the dredge.

They do not spell out any definite theory of ownership, but assert ownership in several different ways, always upon a nebulous foundation. Chiefly, Appellees rely on positive assertions that they had title to the dredge, repeated dogmatically throughout their brief (Pages 12, 26, 28, 32, 35). For example, referring to the promissory note and ledger pages evidencing the debt from the Steinbach brothers to Frances Steinbach (Appellant's Brief 12, 24), Appellees say at page 27:

> "These constitute bookkeeping entries for the convenience of the parties concerned, and do not militate against the fact, as the evidence shows elsewhere, that the Appellees owned the dredge."

In connection with these flat claims of ownership the Appellees entirely fail to show how they got title. They simply say they own the dredge because their husbands said so in course of a family conference (Appellees' Brief 26).

On page 35 of their brief they put forward a hazy and indistinct claim to be the "equitable" owners of the dredge. Equitable ownership basically means a financial

interest in property the legal title to which is in another, usually a trustee. Appellees are inconsistent in claiming both legal and equitable ownership in the dredge. And if they conceive legal ownership in someone else in order to claim equitable ownership in themselves, in whom do they place this legal ownership? Surely not in Captain Corgan, for in the face of the Government transfer to him and his failure to execute by written transfer to anybody else they still deny that Corgan had legal title to the dredge.

Moreover, on what do they rely to create their equitable ownerships? The unsecured obligation of the Steinbach brothers to Frances Steinbach does not give her an equity in the dredge. And Carolyn Steinbach, who paid nothing to anybody, what kind of an equity can she have?

Appellees have still a third theory of ownership which is quite inconsistent with their claims of legal title and equitable ownership. This third claim is also indistinct and hazy, but it comes to something like this.

Appellees say on page 7 of their brief that Captain Corgan purchased the dredge as agent for the "Steinbachs", without specifying which of them he was agent for, and that he himself had no further interest in it. They then continue with their theory of communal property, altogether unsupported by authority, as follows (Appellees' Brief 14):

> "We do not believe that John L. Steinbach spoke an untruth in saying 'Well, what's mine is hers'."

Again on page 22 they quote John L. Steinbach as follows:

> "A. She will get her $1,650.00 back, but we hold our property in common. If I make a loss, she loses too."

This last theory of ownership, then, is to the effect that Captain Corgan bought the dredge as agent for the Steinbachs, apparently all four of them; the four Steinbachs hold their property in a communal manner among the two families, or at least each husband and wife does; thereby the *two ladies became the owners in common with their husbands.*

This theory of ownership is impossible under the Oregon law. Even if it were not, it would not support recovery on this policy in which the two ladies are insured as the owners, not as part owners (Appellant's Brief, Points 5, 6, 7, 8, 9, pages 37 to 46).

POSSIBILITY OF SALVAGE TO INSURER

Let us examine Appellees' several theories of ownership of the dredge in relation to the position of the Appellant upon paying a loss.

O.C.L.A. 101-1119 provides that a wagering marine insurance contract is void and that a contract is deemed wagering where the insured has no insurable interest and does not expect to acquire one, or where the policy is made "without benefit of salvage to the insurer", provided there is a possibility of salvage to the insurer.

Of course if the Appellees had a clear legal title unfettered by the rights and claims of others as Mr. Knapp believed and had a right to believe when he issued the policy, the Appellant could take its salvage from them and pursue its subrogation in their names.

But Appellees took no written transfer, paid no purchase price, took no delivery, and were never in possession of the dredge. They could not make a written transfer of any salvage and they could not prove damage in them alone upon a suit to recover for the loss.

Now, we ask the court to consider where this Appellant stands on the matter of salvage if the Appellees are deemed to own the dredge because their husbands own it and because Appellees own their husbands' property in common with them. Let us suppose again the dredge on the beach, a claim by Appellees for a constructive total loss, a prospect willing to buy the dredge from the insurance company for half the amount of the insurance, desire of the insurance company to pay the loss and realize its salvage (Appellant's Brief 41-42). If the Appellees owned the dredge in common with their husbands, the husbands could not be required to join the Appellees in a transfer of the dredge to the insurance company or its nominee, because they were not assureds.

Thus the company has been induced by misrepresentation of ownership to execute a policy without benefit of salvage to the insurer in a case where there is a possibility of salvage.

There is still another possibility of salvage; namely the claim against the Otto Berg and Otto Berg, Jr. for negligent loss of the dredge. The trial court refused to hear this third party case. How could the Appellant stand in the shoes of the Appellees in respect to the claim against the Bergs and prove damage to them alone if the dredge was owned in common by the Appellees and their husbands? The Appellant could not be subrogated to any right the Steinbach husbands might have against the Bergs, because the Steinbach men, though owners of the dredge in common with their wives, were not assureds under the policy.

If Appellees had an "equitable" interest in the dredge the Appellant, having paid them upon a loss, could have no possibility of salvage or right of subrogation, because they could neither control the dredge as property nor sue to recover for its loss.

Or if Captain Corgan was the owner of the dredge as we contend then the Appellate could not prosecute a claim against the Bergs in the name of and in the right of Captain Corgan because he was not an assured.

The Appellees have not attempted to answer these important questions. They are content to see the insurance company deprived of its salvage, but that is not the intention of the Oregon statute. The statute says that the insurance company shall not contract away its right of salvage if there is a possibility of salvage, as there is in this case.

If Frances Steinbach is considered to have an insur-

able interest to the extent of $1,650.00 the unpaid amount of her debt owing from Steinbach Iron Works, then she might recover to that extent only and the Appellee would be subrogated against Steinbach Iron Works for the amount.

But it will be remembered that this money is due her on an unsecured promissory note. She never had any lien against the dredge nor any other right against the dredge which might be made the subject of an insurance.

We need only add that Carolyn Steinbach is an absolute blank as far as any possibility of interest, salvage or subrogation is concerned, other than sentimental.

CONCEALMENTS AND MISREPRESENTATIONS

Appellant in its brief (pages 17-20) discusses the evidence of John L. Steinbach, Captain Corgan and Mr. Knapp concerning the meeting in Mr. Knapp's office in June, 1945. The three men all told the same story of what occurred at this interview. Appellant in its main brief (51-55) discussed the law relating to these misrepresentations and failures to disclose.

The above two portions of Appellant's brief have produced from Appellees a variety of answers. Appellees says on page 12 of their brief that

> "The internal affairs of the two Steinbach families were of no concern to the Universal Insurance Company or Mr. Addison P. Knapp."

Having thus denied the right of the Appellant's agent to know the facts of which disclosure was withheld, the Appellees continue on page 31 of their brief:

> "Certainly the evidence of the circumstances surrounding the placing of the insurance showed that Mr. Knapp was placed on inquiry and that he declined to inquire."

Surely the Appellees cannot seriously complain of Mr. Knapp's failure to inquire about something he had no right to know. The fact is that Mr. Knapp had every right to know about the internal affairs of the Steinbach family because the ownership of the dredge he was proposing to insure was tied up therein.

But by what was Mr. Knapp placed on inquiry? Mr. Steinbach or Captain Corgan had the Engineer's title letter in his pocket, yet Mr. Steinbach said the ladies had bought the dredge with their money and owned it. Mr. Knapp knew nothing of the Engineer's letter. He took the statements of Mr. Steinbach and Captain Corgan at their face value, as he had a right to do in view of O.C.L.A. 101-1132, 1133, and 1134 (Appellant's Main Brief 18 and 40).

But Appellees have still another inconsistent set of answers to the portions of Appellant's brief dealing with failures to disclose and misrepresentations. They say on page 13 of their brief that Mr. Knapp was never mislead by them.

We find the Appellees arguing first that Mr. Knapp had no right to know the circumstances withheld from

him and concerning which misrepresentations were made; secondly that he was placed on inquiry and declined to inquire about the things he had no right to know of; thirdly that he knew the truth anyway, and was not mislead.

The record gives no support to Appellees' contention that Mr. Knapp was not deceived. He had no means of knowledge other than the words of Mr. Steinbach and Captain Corgan.

To top the climax of this structure of inconsistency the Appellees say on page 32 of their brief, although they do not say it directly because it would be a gross perversion of the testimony, that Mr. Knapp invited the misrepresentations and condoned the concealments. No evidence supports this shot in the dark.

Appellees in their brief on pages 11 and 12 refer to Mr. Knapp's testimony that if told that the Government Engineers had transferred the dredge to Captain Corgan he would not have issued the policy to the ladies but would have told Mr. Steinbach and Captain Corgan that the proper way to insure the dredge would be in the name of whoever might hold the title to it (Appellant's brief 23 and 53). They then draw the unsound conclusion that Mr. Knapp meant that he did not care whose money bought the dredge provided it was insured in the name of the party who had the legal title.

This is not correct. Mr. Knapp did not convey that meaning. If it appeared to him that one party paid the money and another party took the title he would natu-

rally want to know the relationship between the two parties. But he was not told that one party paid the money and another party took the title. He was told (198) that the dredge was being purchased in the names of the women "with their money" (Appellant's Brief 17).

The exceptions of O.C.L.A., Section 101-1132, do not apply to this case as claimed by Appellees on page 34 of their brief. Nothing encompassed by the misrepresentations and failures to disclose has to do with diminishing the risk; nothing was of a kind which would be presumed to be known by the insurer; nothing was waived by the insurer, nothing was made superfluous by express or implied warranties.

WAIVER AND ESTOPPEL

The appellees contend in various parts of their brief that the Appellant has waived the defenses set up on this appeal. There are a good many answers to this contention and to state them all fully would probably extend this Reply Brief to an unreasonable length. We concede, of course that an insurance company can waive defenses or can be estopped to assert defenses based upon clauses placed in its policy for its own benefit. But the position of the Appellees is vastly different.

Appellees rely upon prohibitory statutes of the State of Oregon, not upon the conditions of their own policy. These statutes are as much binding on the Appellant as on the Appellees. Neither party can waive or disregard their provisions. The Oregon court has said very

pertinently about a similar prohibitory statute in *Rhodes v. Equitable Life,* 109 Ore. 586, 594; 220 Pac. 736:

"The insurer cannot waive the statute."

The requirement of insurable interest is absolute and lack of it is not excused by good faith on the part of the assured or by waiver or estoppel on the part of the insurer. *Agricultural Ins. Co. v. Montague,* 38 Mich. 548; *Patterson v. Durand Farmers Mutual,* 303 Ill. App. 128, 138, 24 N.E. (2) 740; *Hirsh v. City of N. Y. Ins. Co.,* 218 Mo. App. 673, 267 S.W. 51; *Davis Wood Lbr. Co. v. Insurance Co. of No. America,* ..... La. ..... , 154 So. 760, 767.

The first of the above cases, *Agricultural Ins. Co. v. Montague,* is a leading authority. Personal property belonging to a wife was insured in the name of the husband. This was done with full knowledge of the facts by the insurance company and with its full consent and attempted waiver. Nevertheless the policy was held void for want of insurable interest.

The main ground of waiver and estoppel relied on by Appellees is that on November 30, 1945, long before the commencement of this action, the Appellant denied liability by reason of breach of warranty in that the towage was undertaken by the fish boat instead of by the approved tug (Tr. 234).

The Appellees pleaded no waiver or estoppel in their complaint and offered no evidence tending to prove

waiver or estoppel. It is too late for them to urge this cause of suit on this appeal. *Waller v. City of N. Y. Ins. Co.,* 84 Ore. 284, 293.

Appleman in his new work on insurance defines and distinguishes waiver and estoppel as follows (16 Appleman 594):

> " 'Waiver' is voluntary relinquishment of a known right * * * * * ."
>
> " 'Estoppel' * * * * necessarily implies prejudicial reliance of the insured upon some act, conduct, or nonaction of the insurer * * * * * ."

Neither waiver nor estoppel will be implied as against an insurer to prevent the insurer from asserting a fact by way of defense of which it had no knowledge at the time of the act constituting the alleged waiver or estoppel (Appellant's Brief 4). *Obartuch v. Security Mut.* (C.C.A. 7) 114 F. (2) 873, 881, Cert. den. 312 U.S. 696, Reh. den. 312 U.S. 716; *Ins. Co. v. Wolf,* 95 U.S. 326, 333, 24 L. Ed. 387; *Home Life v. Meyers,* (C.C.A. 8) 112 F. 846, 852; *Keehn v. Excess Ins. Co.,* (C.C.A. 7) 129 F. (2) 503, 505.

Where an insurance company denies liability on one ground it is not precluded from setting up a defense on another ground unless the insured was lulled into security as to the second defense by the denial. *Goodwin v. Federal Mutual Ins. Co.,* ..... La. App. .... , 180 So. 662; *Mitchell v. American Mutual Assn.,* 226 Mo. App. 696, 46 S.W. (2) 231, 237; *Slater v. General Casualty Co.,* 344 Pa. 410, 25 Atl. (2) 697.

Respectfully submitted,

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Attorney for Appellant.

APPENDIX

(Excerpts from Pre-trial Exhibit 6, deposition of Hugh Corgan, taken in this case at Portland on May 29, 1946. Italicized parts are corrections made by Captain Corgan.)

(4) "Q. By whom were you so employed?
A. Well, it would be the Coast Dredging & Construction Company, Ltd.
Q. Is that a corporation or a partnership?
A. A partnership.
Q. Who are the partners?
A. There is John Steinbach, Dave Steinbach, and J. H. Corgan, and myself.

* * * * * * * * *

(5) Q. Did this partnership own the dredge Wishram before the loss of the dredge?
A. Well, it is a good deal the same as my house out there; I own it when it is paid for.

* * * * * * * * *

(6) Q. Was it a mortgage or a contract of purchase?
A. Well, I would say it was a mortgage because we had a loan. Wouldn't that be right, Mr. Winslow?
MR. WINSLOW: Well, of course, I can't answer.
Q. There was a loan against the dredge, was there?
A. There was borrowed money.
Q. The partnership borrowed money on the security of the dredge?
A. Yes.
Q. How much money did the partnership borrow on the dredge?

* * * * * * * * *

(6) A. Well, it is kind of a peculiar circumstance. When it comes to the amount as far as Jimmy and

I were concerned, it was all borrowed. The Steinbachs put up the money, the women and the men.

* * * * * * * * *

(8) Q. To whom did you and your son become indebted for your interest in the dredge?

A. To the Steinbachs.

Q. To the women or the men?

A. Both.

* * * * * * * * *

(8) Q. Did the partnership purchase the dredge or did somebody else purchase it and sell it to the partnership?

A. I acted as agent.

* * * * * * * * *

(9) Q. Did you purchase the dredge in your name and sell it to the partnership?

A. I purchased it in my name with the Steinbach checks and turned it over to Steinbachs.

Q. Who issued the checks?

A. Mrs. Steinbach issued part of them, and John Steinbach and Dave the other part.

* * * * * * * * *

(11) Q. Who paid the money that was necessary to fit the dredge for the towage from Coos Bay to Nehalem Bay and for the insurance premium and the other expenses that the dredge incurred?

A. Well, the Steinbachs, John and Dave paid part of it and the Steinbach women paid what we were short—or what they were short.

Q. Did the Government issue a bill of sale at the time of your purchase of the dredge from the U. S. Enginers?

A. Yes. *In the form of a letter addressed to me.*

* * * * * * * * *

(12) Q. Who was the purchaser named in the bill of sale?

A. Myself. *That is, the letter was address to me.*

Q. Did you issue a bill of sale to anybody for the dredge?

A. No, I just turned the bill of sale over to the Steinbachs, as I was their agent.

Q. Who was the party who loaned the money on the dredge that you referred to when you spoke of the mortgage on it?

A. The Mrs. Steinbachs and the men, the two Steinbachs.

Q. The two ladies and the two men?

A. Yes.

Q. To whom did they loan the money?

A. To the two men, John and Dave.

Q. Do you know whether or not a mortgage was actually issued or executed in respect to the dredge and on the dredge as security for that loan?

A. Well, all I know is that they were supposed to be—or they were secured by the insurance policy. That was the chance they were taking.

Q. Now, was there a written partnership agreement on the organization of the Coast Dredging & Construction Company?

A. Yes.

* * * * * * * * *

(14) Q. Was your sole occupation from June, 1945 until November, 1945 the management and operation of that dredge?

A. Yes, sir.

* * * * * * * * *

(14) Q. Did you receive a salary for that service?

A. Well, part of the time.

Q. From whom did you receive the salary?

A. From the Coast Dredge & Construction Company.

Q. Was that salary paid by checks?

A. Yes, sir.

Q. And were the checks signed by the Coast Dredging & Construction Company?

A. They were signed by J. H. Corgan, who was Secretary and Treasurer.

* * * * * * * * *

(15) Q. Did your son Jim get a salary?

A. The same as myself, part of the time.

Q. Did either of the two Steinbach men get salaries?

A. No.

Q. Did either of the two Steinbach ladies get salaries?

A. No.

* * * * * * * * *

(16) Q. Would you describe yourself as the General Manager or Captain of the dredge?

A. General Manager.

* * * * * * * * *

(21) Q. Who instructed the company to issue the insurance policy in the names of the two Steinbach ladies?

A. I did.

Q. Upon whose direction did you give Knapp and Rathbun that instruction?

A. Well, we talked it over among we four. They wanted security. Therefore, I was given authority to grant that wish. In fact, they insisted.

Q. Who gave you the authority?

A. Well, you might say the women as well as the Steinbachs. The women insisted on security.

Q. When you say that 'we four talked it over,' do you refer to yourself, Jim, and John and Dave Steinbach?

A. Yes.

Q. And did you also talk it over with the two ladies?

A. No. Their husbands were acting for the ladies.

Q. It was really then, was it, John and Dave Steinbach who instructed you to issue the policy in the names of the two ladies?

A. Yes.

Q. Your son didn't have any voice in the matter in particular, did he?

A. Not at that time.
Q. Nor yourself?
A. Well, yes, because I was one of the ones that was the borrower."

* * * * * * * * *

"All references made by me in the testimony given in this deposition to a written partnership agreement under the name Coast Dredging & Construction, Ltd. refer only to such written agreements as were executed on and after July 23, 1945."